IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1459 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SITABEN ALIAS SAPNA SATISH AGRAWAL

Versus

SATISH PYARELAL AGRAWAL

Appearance:

MR SR SHAH for Petitioner

MR RC JANI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/02/2001

ORAL JUDGEMENT

1. Rule. Mr. R.C. Jani waives service of Rule on behalf of the respondent. In the facts and circumstances of the case, the matter is taken up today for final hearing.

2. The applicant herein, who is the opponent in Hindu Marriage Petition No.34 of 1996, pending before learned Civil Judge (S.D.), at Palanpur, has moved this application for transfer of the said Marriage Petition to the Court of learned Civil Judge (S.D.), at Gandhidham, on the ground that she is residing at Gandhidham with her parents who are non-affording. She is required to undertake a long journey from Gandhidham to Palanpur on every adjournment. According to the petitioner, Palanpur Court has no jurisdiction as neither the petitioner nor the respondent reside within the jurisdiction of Palanpur Court. The petitioners case is that H.M.P. is filed at Palanpur only with a view to harass the petitioner as the respondent stays at Abu Road.

3. This Court, while issuing notice to the respondent, granted stay of proceedings of Hindu Marriage Petition No.34 of 1996.

4. This application is opposed to by the respondent. The respondent preferred Civil Application No.9306 of 2000 for vacating the interim relief. Thereunder, he has come with two proposals. The first being that respondent-husband is ready and willing to pay expenses of transportation lodging and miscellaneous expenses to the petitioner to attend the Court on every adjournment in the proceedings before Civil Judge (S.D.), at Palanpur. The second proposal being that the respondent has no objection if Hindu Marriage Petition No.34 of 1996 pending before Civil Judge (S.D.), Palanpur is transferred to the Court at Abu Road, which is having jurisdiction to entertain and try the petition.

5. Heard the learned advocates Mr. S.R. Shah for the petitioner and Mr. R.C. Jani for the respondent. Mr. Shah has placed reliance on the following decisions:-

(1) Minesh Rajnikant Dalal v. Avani Minesh Dalal, 2000(2) GLR 1685.
(2) Mona Aresh Goel v. Aresh Satya Goel, JT 2000 (3) SC 603.
(3) Raj Laxmi Sharma v. Dilipkumar Sharma, JT 2000 (8) SC 150.
(4) M. Premlatha v. S. Sivaram, JT 2000 (8) 306.

5.1 Mr. Shah submitted that the present case is squarely covered by these judgments. The petitioner, who is the wife, is sought to be harassed by the respondent-husband and put to lot of expenditure. Although an offer is made in the Civil Application to pay costs, even maintenance awarded is not paid and,

therefore, the petition may be transferred.

6. Mr. Jani, on the other hand, has placed reliance on the decision reported in 1996(8) Supreme 113, wherein the request for transfer of the proceedings was declined by the Apex Court.

7. Having regard to rival side contentions, it is clear that the petitioner is staying at Gandhidham, which is at a notable distance from Palanpur. Admittedly, respondent-husband, who has preferred the Hindu Marriage Petition, stays at Abu Road and still the Hindu Marriage Petition is preferred at Palanpur. The petitioner-wife has contended that her parents and herself are not in a position to bear the financial burden of journey to Palanpur on every adjournment and they apprehend physical violence if they go to Palanpur. Indulgence of this Court is, therefore, sought in form of transfer of Hindu Marriage Petition to the Court at Gandhidham. The decisions relied upon by Mr. Shah squarely deal with this question in favour of the petitioner. It requires to be noted that the decision relied upon by Mr. Jani cannot be applied to the facts of the present case. In the case before the Apex Court, the husband was a doctor and the Apex Court considered the fact that the patients of the husband would suffer if the suit is transferred and the husband is required to undertake the journey on every adjournment. That being so, that decision cannot be applied to the facts of the present case where the respondent-husband is engaged in mining business and there is no chance of any sufferance of a third party because of the transfer of the Hindu Marriage Petition. Under the circumstances, this Court is inclined to entertain this application. Hindu Marriage Petition No.34 of 1996, pending in the Court of learned Civil Judge (S.D.), Palanpur is directed to be transferred to the Court of learned Civil Judge (S.D.), at Gandhidham, at the earliest, preferably within eight weeks. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

gt